



Terms and Conditions of Service

The following describes the terms and conditions which are applicable to users of InphoniteVoice and related software (the "Service") available under the domain and sub-domains of <http://www.inphonite.com> (the "Site"). The Service and Site are owned and administered by Inphonite, LLC, ("InphoniteVoice," "IV-SaaS," "Inphonite," "we," or "us").

By signing up for InphoniteVoice Software as a Service, ("IV-SaaS") you are stating that you and the office or business with which you are associated (collectively, "you" or "Customer") have read and agree to the Terms and Conditions, including the Business Associate Agreement terms and Privacy Policy displayed as a part of the online registration process. These Terms and Conditions, as well as the Business Associate Agreement and Private Policy are referred to as the "Agreement." If you are entering into this Agreement on behalf of a business, medical or dental practice, you represent that you have the authority to bind said business to this Agreement. Inphonite reserves the right to update and change the Terms and Conditions from time to time, without notice. Changes to the Terms and Conditions are effective as of the "Last Updated" date. Continued use of the Service after any such changes or update shall constitute your consent to such changes.

1. DESCRIPTION OF SERVICES

Inphonite shall help set up and provide to you the use of the Service conditional upon acceptance and compliance by the Customer with the Order Form, Business Associate Agreement, and these Terms and Conditions.

2. QUALIFYING CUSTOMERS

Inphonite has complete and full rights to qualify Customers for IV-SaaS. Inphonite further has complete and full rights to deny or limit Services for any customer at any time.

3. PRICES, FEES, LIMITATIONS & TERM

A. **FEES:** All messages sent during any previously agreed upon Trial periods are at no charge to the customer. All messages sent subsequent to any Trial period will be billable and payable based upon the chosen Bundle plan, online order, accepted PO, or Order Form. Any returned checks will incur a fee of \$35.00. Any InphoniteVoice credits applied to any accounts with returned checks will be immediately removed from those accounts until such time as payment is made and processed in full. Additionally, payment will be required in the form of a credit card and checks will no longer be accepted from any Customer with insufficient check funds.

B. **LIMITATIONS:** Inphonite reserves the right to limit the messaging types, rules, languages, and styles for any Trial periods. Inphonite further reserves the right to determine the best method of implementation for a customer, particularly for multiple site integrations.

C. **TERM and CONTINUATION OF SERVICE:** As part of training Customer may choose a Bundle credit plan or set up threshold notification amounts so their bank of Message Credits never depletes without warning. The Customer may be asked to acknowledge a continuation of Service following any previously agreed upon Trial Offer periods upon their set threshold reminder and/or prior to expiration of any Trial Offer periods, or if signed up for a Bundle credit plan, will immediately begin paying and continue with the plan upon expiration of any Trial Offer periods. Should the Customer wish to continue with said Service, it is understood that they agree to pay standard non-refundable fees thereafter based upon our credit structure found here: <http://www.inphonite.com/inphonitevoice/saas-credits-explained.aspx>. This continuation of Service Term shall be known as the Renewal Term. Inphonite reserves the right to adjust standard pricing or credit values at any time. Inphonite may also further elect to offer select occasional promotions or gift select customers with free

credits at any time. Customer can cancel at any time by contacting Inphonite, with the understanding that no remaining credits will be refunded.

- D. **TERMINATION OF SERVICE FOR DISUSE:** Inphonite retains the right to terminate the Service, destroying any account content, including and not limited to user name, password, account settings and rules and any data transferred by Customer to Inphonite, after 90-days of account and/or credit usage inactivity or upon written request from Customer.
- E. **QUOTATIONS:** Unless otherwise indicated, Inphonite quotations are valid for (30) days from date of issuance.

4. INTELLECTUAL PROPERTY

- A. **LICENSE GRANT:** Inphonite grants the Customer a non-exclusive, non-subliceable and non-transferable license to use the Service during the Term, or Continuation of Service Term. Provided that Customer's online account is active and in good standing, Customer will be entitled to receive at no additional charge, (A) updates to the then current version of the Service (B) new versions of the Service when Inphonite releases and makes upgrades generally available from time to time to its Customers—if a version to be released substantially alters or adds to the functionality and features of the then current version of the Service, Inphonite reserves the right to charge a price (as determined in its sole discretion) in respect of that version to be released, (C) Telephonic or Email Technical Assistance within the Technical Support Policy terms, (D) Unlimited software Importing from your Database to the InphoniteVoice Service. This Agreement does not entitle the Customer to any hard-copy documentation or other printed materials unless specified in writing in the Order Form. Subject to the terms and conditions of this Agreement, Inphonite grants to the Customer the right to use the Service and to integrate the Service into the Customer's applications solely for its own internal use and for no other purpose whatsoever.
- B. **LICENSE RESTRICTIONS:** Except as otherwise expressly permitted in this Agreement, or in any other agreement to which Inphonite is a party, the Customer may not: (i) modify, translate or create any derivative work of the Service; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code or underlying ideas for the Service (except to the extent applicable laws specifically prohibit such restriction); (iii) copy, install or use the Service on any Server not listed in the Order Form without Inphonite's prior written consent; (iv) redistribute, encumber, sell, rent, lease, sublicense, assign or commercially exploit or make available to third parties or otherwise transfer rights to the Service to any other persons or to any other Server not listed in the Order form; (v) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Service; or (vi) violate any local, state, federal or foreign law, treaty, regulation or restriction, and other laws applicable to Customer related to privacy, publicity, data protection.
- C. **PROPRIETARY RIGHTS:** All rights, title and interest to the Service, including all intellectual property in the Service (including, without limitation, copyrights, patents, trade secrets, trademarks, moral rights, and other intellectual property rights, in and to the Service, all modifications, changes, enhancements, or additions thereto) or any know-how developed during the course of this Agreement shall remain property of Inphonite. Additionally, Inphonite reserves all rights not expressly granted to Customer in this Agreement. To the extent Customer acquires any intellectual property rights in the Service, Customer assigns such rights to Inphonite and waives any moral rights it may have in the intellectual property thereto and in favor of Inphonite. The Customer acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with Inphonite's ownership rights with respect to the Service. The

Customer further acknowledges and agrees that the Service is the property of Inphonite and that the only right Customer has with respect to the Service and related material is to use them in accordance with the terms of this License. All right, title and interest in any Content compiled by the Customer communicated via the Service or any other application shall remain the sole property of the Customer. The license granted under this Agreement gives Inphonite no right to such Content.

5. CUSTOMER'S ACKNOWLEDGEMENTS AND OBLIGATIONS

- A. **MULTIPLE USERS:** As the Licensee, you also acknowledge and agree to cause all persons who use the Service through the computer or any computer belonging to you, your affiliates, subsidiaries, assigns or any other non-arm's length party to review and comply with the terms and conditions of this Agreement. You further acknowledge and agree that as the Licensee you are solely responsible and liable for any and all breaches of the terms and conditions of this Agreement, whether such breach is the result of use of the Service by you or by any other user or persons using the Service through your license.
- B. **COMPUTER EQUIPMENT:** The Customer acknowledges and agrees to these requirements and further agrees that it will not be entitled to receive technical support relating to any issues other than the Service as unmodified. Inphonite does not represent or warrant that a non-recommended configuration will enable the Customer to successfully access, operate or use the Service or that the installations of any hardware or software will not cause damage to the Customer's computer, peripherals, software or data.
- C. **ACCESS TO THE SERVICE:** The Service shall be accessed through the Internet. The Service does not include Internet access. The Customer acknowledges and agrees to purchase and maintain Internet access. The Customer further acknowledges and agrees to compensate Inphonite for the Service as set forth during the online ordering process, or paper Order Form even if the Customer does not have available Internet access. Customer acknowledges and agrees that it is beyond the reasonable control of Inphonite to ensure that use of the Internet or the Service will be free of viruses, worms, Trojan horses, or disabling devices or other code that manifests contaminating or restrictive properties, and Inphonite shall not be liable for any loss or damage with respect to any damage incurred by the Customer, directly or indirectly, when it accesses the Internet.
- D. **PERMISSION TO PURCHASE, USE AND DISPLAY CUSTOMER PHONE NUMBER:** Customer grants permission to Inphonite to purchase and use a private text phone number on behalf of Customer and display the Customer's business telephone or text number on outbound telephone calls/texts placed on behalf of Customer. Inphonite agrees and hereby warrants that at no time will Customer's business telephone number be used on any calls/texts that are not legitimately and appropriately placed on behalf of customer, based on the information transferred to Inphonite for such purposes. Displaying the Customer's business telephone number on outbound calls/texts allows called parties to identify the source of the call with caller ID services and therefore improves the successful delivery of telephone messages to the Customer's patients, clients, or associates. Inphonite cannot control Caller ID services on any particular telephone network and therefore makes no warranties or guarantees regarding the actual displayed content that any particular carrier chooses to display on Caller ID.
- E. **NO CRITICAL APPLICATIONS:** The Customer acknowledges and agrees that the Service is not designed, intended, authorized or warranted to be suited for critical applications where failure or potential failure of the Service can cause injury, harm, death or other grave problems, including, without limitation, delays in getting

medical care or other emergency services. The Customer acknowledges and agrees that use of the Service to support such application is fully at its own risk and that the Customer assumes all risk arising out of such use.

- F. **CONTENT:** The Customer acknowledges that Inphonite assumes no responsibility for and exercises no control over the Content communicated via the Service as provided by the Customer (the "Content"). Inphonite shall not be liable for any loss or damage arising out of inaccurate and/or incomplete Content provided by the Customer. Inphonite makes no representation or warranty that the Service shall accurately contact or connect with any third parties as directed by the Customer or that such Content will be communicated in part or in entirety.
- G. **TERMINATION IN EVENT OF BREACH:** The Customer acknowledges and agrees that, in addition to the termination rights set out herein, Inphonite may, in its sole discretion, suspend or terminate one or more features of the Service without notice or refund if the Customer is in breach of any term or condition of this Agreement.
- H. **PROHIBITED USE:** The Customer agrees that it shall not use the Service or other features of the Service to, directly or indirectly: (a) copy, distribute or sublicense any software Inphonite provides or makes available to the Customer; (b) alter, modify or tamper with the Service or other feature(s) of the Service; (c) resell the Service or provide the Service to any third party without written permission and Agreement; and (d) in a manner that (i) is libelous, harmful to minors, or constitutes pornography; (ii) infringes the copyrights, patents, trade secrets, trademarks, trade names or other proprietary rights of a third party or is otherwise unlawful; or (iii) would otherwise give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offence, under any applicable law or regulation. In addition to Inphonite's termination rights set out elsewhere in this Agreement, Inphonite may terminate this Agreement if the Customer engages in one or more of the above prohibited activities. Customer agrees to indemnify and hold harmless Inphonite and its officers, directors, shareholders, employees, and agents from and against all third party claims arising due to a breach of any of the provisions of this Section.
- I. **SECURITY:** The Customer is solely responsible for taking the necessary precautions to protect itself and its equipment, software, files and data against any and all risk inherent in the use of this shared resource. Without limiting the foregoing: (a) Customer is solely responsible for the security of any device which the Customer chooses to connect to the Service, including any data stored on such device; (b) Customer is responsible to ensure that others do not gain unauthorized access to the Customer's computer by taking the appropriate security measures; (c) The Customer is solely responsible for any and all Content transmitted. Inphonite makes no representations or warranties with respect to or connection with the security or confidentiality of the data transmission. Notwithstanding the foregoing, Inphonite does provide tools to allow for secure messaging, however, the Customer is responsible for utilization of these tools and features. Inphonite is not responsible or liable for negligence or misuse by Customer regarding same. The Service, accessed via the internet through a personalized URL, requires a private password and login ID. The Customer understands that possession or knowledge of login information would result in that person being able to access the Service. The Customer acknowledges and agrees that the security and login information is the Customer's responsibility and Inphonite and its suppliers are released from any liability resulting from unauthorized access into the Service not caused by our negligence. In no event shall Inphonite be liable for any loss of Content or other claims, losses, actions, damages, suits, or proceedings to the extent the same arose from unauthorized access to the Licensee's account by obtaining login information caused by a negligent or willful act of the Customer, or arising out of or otherwise relating to the Customer's failure to take appropriate security measures. The Customer is responsible for the entire cost of any service, repairs, or

connections of and to any computer using the Service which may be necessary as a result of the Customer's failure to take appropriate security measures.

- J. NATIONAL AND STATE DO NOT CALL COMPLIANCE AND SMS/TEXT/EMAIL OPT-IN: It is the sole responsibility of the Customer to comply with National and State Do Not Call regulations that restrict telemarketing calls/texts. Inphonite will not knowingly violate any federal or state dialing regulations. Customer warrants that every telephone number submitted to Inphonite for call generation is either exempt from such regulations and/or that Customer has verified that the telephone numbers submitted to Inphonite are not included in any State or Federal Do No Call lists. Customer is fully and solely responsible for any action that results from any violations of Do Not Call Lists and fully indemnifies Inphonite from any and all such actions. Customer shall pay the cost of Do Not Call List compliance, and acknowledges that the fees listed in this agreement do not and shall not include any aspect of DO NOT CALL LIST compliance. For SMS/Text Messaging services and emailing, Inphonite provides opt-in and opt-out options as required by regulatory provisions. Some services allow Customer to create and send text messages to any phone number or email messages to any email address. If Customer chooses to use these features, then Customer agrees to be fully responsible for obtaining permission to send messages to any and all phone numbers and email addresses that the customer submits to the Service.
- K. LIABILITY: Inphonite agrees to indemnify, defend and hold Customer harmless from any claim of United States patent, trade secret, or copyright infringement asserted against Customer by virtue of Customer's licensed use of the Software, provided that (a) Inphonite is given prompt written notice of any such claim; (b) Inphonite has the sole right to control and direct the defense of the such claim; and (c) Customer shall reasonably cooperate with Inphonite in such defense.

Inphonite shall have no liability for any claim of infringement that results from: (a) any modification of the Software by Customer; (b) any failure by customer to implement updates to the Software as supplied by Inphonite; (c) the combination, operation, or use of the Software with non-Inphonite programs, data or documentation, if such infringement would have been avoided by the use of the Software without such combination, operation or use; or (d) materials developed by Inphonite in accordance with Customer's specific design instructions.

In the event the Software, in Inphonite's opinion, is likely to or does become the subject of a claim of infringement, Inphonite shall have the right at its sole option and expense to: (a) modify the Software to be non-infringing while preserving substantially equivalent functionality; (b) obtain for Customer a license to continue using the Software; (c) or terminate this Agreement and the license hereunder.

THE FOREGOING STATES THE ENTIRE LIABILITY AND OBLIGATION OF INPHONITE, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT OR CLAIMS OF INFRINGEMENT BY THE SOFTWARE, OR ANY PART THEREOF, OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT.

6. SERVICE MONITORING AND WARRANTIES

Inphonite monitors the InphoniteVoice servers regularly. InphoniteVoice is a highly reliable service provider with very little downtime. Inphonite installs updates during off-peak weekend hours, generally with no more than a couple of hours downtime for these updates. However, due to the nature of computers, the Internet, and phone lines, it is possible that we may experience some other outages and will not be able to provide our services on any given day or time. The Service is further supplied on an "as is" basis without warranty of any kind. Inphonite disclaims all warranties,

both express and implied, including but not limited to any implied warranties of merchantability and fitness for a particular purpose and any warranties of non-infringement.

If for any reason we do experience an outage of our services, call credits for paid users will be refunded to your account. There will be no compensation to Trial Offer Service users whatsoever.

We reserve the right to change, limit, or eliminate IV-SaaS at any time without advance notice. If such a change is made to InphoniteVoice, we will do our best to notify our users via e-mail.

The Customer is solely responsible for ensuring that all information, including contact information, in the Customer's database is accurate. Therefore, please be certain the contact information in your database is accurate and up to date. We do not provide refunds for messages that were setup with improper contact information, including and not limited to area codes, phone numbers, email addresses, dates, times, or using the improper time zone or message preference. Please double check your calls/texts and understand that if you're sending out a call/text from a specified time zone, the call/text will be sent out at that time to ALL your callers and is not adjusted for each phone number's local time zone.